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OFFICE OF PETITIONS

In re Application of :
Zhong, et al. : DECISION ON APPLICATION
Application No. 09/828,034 : FOR PATENT TERM
Filed: April 6, 2001 : ADJUSTMENT
Atty. Dkt. No.: IN01165 :
:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705(b)" filed June 28, 2004.

Applicants herein request that the Determination of Patent Term Adjustment be corrected from 504 days, as indicated on the Determination of Patent Term Adjustment mailed March 23, 2004, to an adjustment of 679 days.

An adjustment of 484 days can be attributed to the Office in accordance with 37 C.F.R. § 1.702(a)(1). A further adjustment of 20 days can be attributed to the Office in accordance with 37 C.F.R. § 1.702(a)(2).

Applicants argue that the application is entitled to an additional adjustment of 175 in accordance with 37 C.F.R. § 1.702(b) as it relates to the Office's failure to issue the patent within 3 years of the filing date. A decision as to the period of adjustment under 37 C.F.R. § 1.704(b) is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term for Office failure to issue the patent within 3 years. See, 37 C.F.R. § 1.703(b).

Applicants are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within three years. A copy of this decision should accompany the request. Applicants may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of 37 CFR 1.705(d) must be met.

Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Applicants are reminded that if an application is entitled to an adjustment under 35 USC 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 USC 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 USC 154(b)(1)(B) in determining whether periods of delay overlap under 35 USC 154(b)(2)(A).

Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See, 35 USC 154(b)(1)(B), 35 USC 154(b)(2)(A), and 37 CFR § 1.703(f). See, also, *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

Accordingly, the period of patent term adjustment as of the date of mailing of the Notice of Allowance is 504 days.

The application file is being forwarded to the Publications Division for issuance of a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

Kerry Fries
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Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Adjustment PAIR Calculation